

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner lives with her son and her boyfriend and his two children. Following a recent review of her and her son's eligibility the Department sent a notice on June 6,

2007 terminating her VHAP benefits and her son's Dr. Dynasaur benefits, effective June 30, 2007.¹

2. There is no dispute that the petitioner's income is from self-employment in an S-corporation, of which she is the sole owner. The dispute in this matter concerns whether "profits" of the corporation, as well as the "salary" the petitioner takes from the corporation, as reported by the petitioner on her personal and corporate income taxes, must be counted in determining her and her son's eligibility for VHAP and Dr. Dynasaur.

3. Based on the petitioner's tax filings, the Department determined that the petitioner's countable income in wages and corporate profits was \$3,491.41 a month, which was in excess of the allowable maximums of both the VHAP and Dr. Dynasaur programs.

4. At her hearing the petitioner did not dispute the Department's calculations of her income, but she argued that the Department should not count the profits from her corporation, because she does not spend them in addition to her salary. The petitioner maintains that her situation is

¹ The petitioner's son was given an applied income or "spend down" amount of \$7,930.20 for the six-month period beginning July 1, 2007 to be eligible for Dr. Dynasaur (see *infra*).

really no different than any "employee". There is no claim or indication, however, that the petitioner's practice of not putting the corporate profits to her own use and benefit is based on anything other than personal business and lifestyle decisions she has made, rather than on any legal impediment.

ORDER

The Department's decision is affirmed.

REASONS

Under the VHAP regulations, all earned income, except a \$90 disregard for each earner, is included as countable income for eligibility. Income is defined as including "all wages, salary, commissions or profit from activities in which the individual is engaged as an employee or self-employed person". W.A.M. §§ 4001.81(c). As noted above, the petitioner does not dispute the Department's calculations of her "wages" and the "profit" her business makes. Based on the above regulations, it must be concluded that the petitioner has countable income well in excess of the maximum for eligibility under the VHAP program for a parent in a two-person family, which is \$2,111. P-2420 B.

Unfortunately, the petitioner's countable income (\$3,491.41) is also in excess of the maximum allowable for her son's eligibility for Dr. Dynasaur—but only slightly, as the maximum for this program is \$3,423. *Id.*² Thus, the Department's decisions finding the petitioner ineligible for VHAP and her son for Dr. Dynasaur based on her reported wages and business income must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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² Although the petitioner's income is only slightly over the maximum for Dr. Dynasaur, under the Medicaid regulations her applied income or "spend down" is based on the regular Medicaid "protected income level" of \$858 a month. There are no separate applied income provisions in the Dr. Dynasaur program. See W.A.M. §§ 3000 *et seq.* and M412 *et seq.* In light of this the petitioner might consider voluntarily reducing her wages or business profits and reapplying for Dr. Dynasaur and/or VHAP.